

**VERMONT RAIL COUNCIL
MINUTES OF MEETING
NATIONAL LIFE BUILDING
MONTPELIER, VERMONT
December 5, 2007**

MEMBERS PRESENT: Sam Lewis, Chairperson

Elizabeth Curtiss	Dave Wulfson
Charles Hunter	Rep. Sonny Audette
C.J. "Mike" Coates	Rep. Bill Aswad
George Barrett	Erik Bohn
John Cook	William McCormick
Rick Moulton	

OTHERS PRESENT: Charlie Miller, VTrans Rail Operations Section
Dick Hosking, VTrans Rail Operations Section
Nancy Rice, VTrans Rail Operations Section
Anthony Otis, Railroad Association of Vermont
Matt Levin, Vermonters for a Clean Environment
Paul Craven
J. Jeffrey Munger, Senator Sanders Office
John Wilson, Jacobs Edwards Kelcey-Manch, NH
Tom Macauley, Rutland Redevelopment Authority
Carl Fowler, Rail Travel Center
Chris Parker, Trainriders Northeast
Mary Anne Michaels, VRS
Tammy Campbell, RailAm
Donald Valentine, citizen
Aimee Pope, VTrans
Ted Brady, Sen. Leahy's Office

1. Call to Order & Approval of Minutes

Sam Lewis called the meeting to order at 1:08 p.m. Introductions were made.

Approval of Minutes (10/3/07)

MOTION by Mike Coates, SECOND by John Cook, to approve the 10/3/07 minutes with the following correction:

Page 7, Burlington Tunnel, 1st paragraph, 3rd sentence – change “5,000 cars daily” to “5,000 cars annually”.

VOTING: unanimous; motion carried.

2. Project Update

Dick Hosking reviewed a handout showing the status of rail projects as of 12/4/07, noting work has ceased for the winter on the tie replacement in Manchester, rail will be installed in the spring in center Rutland, work will start in the spring in Pittsford, and the contract

is under review for work in Proctor and Salisbury. The Mayor of Rutland wants to change the location of the rail yard. Paperwork from New England Central Railroad for signal work at Montpelier Jct. has been received. Six design consultants have been selected to provide information to Contract Administration so contracts can be prepared for start of work in January, 2008. Sunderland Bridge #63 will be replaced with a bridge from Rutland. Track and roadbed improvements in White River Jct. are done and surface work will be under another contract.

3. Update: DMU and Twin State Railroad

Twin State Railroad

Sam Lewis reported there has been no change in the status of the Twin State Railroad. There is some interest in the power plant and transportation of wood chips. NEVDA asked for material pertaining to rehabilitation costs. The purchase option has expired, but no information has come forth indicating the seller is not willing to sell to a buyer.

DMU

Sam Lewis reported the RIF loan for the DMU cars was prepared, submitted, approved, and is ready for signature. The Amtrak grant is also ready for signing. Colorado Railcar and Amtrak are in agreement on specifications. The manufacturer's agreement is done, but the financial guarantees are still an issue. Colorado Railcar has a satisfactory bond agreement for the manufacturing period, but the buy-back option is not covered by bond due to the cost. At the completion of the demonstration period, the remaining cost will go onto the debt statement. Language guaranteeing a buy-back by Colorado Railcar is needed. The contract will fail if all conditions are not met. Some conditions are problematic for VTrans, such as cars having a flaw not covered by the warranty will not be accepted back (buy back) by Colorado Railcar or Amtrak, and the cars must be in compliance with all federal rules and state laws. Impasses must be resolved in order to secure approval from the Attorney General and State Treasurer per the mandate from the legislature. VTrans continues to support the DMU project. If additional federal funding can be secured, the project can move forward.

Erik Bohn asked about existing rail cars in service made by Colorado Railcar. Sam Lewis stated there was a demonstration car running in the lower 48 states and Alaska. Bi-level cars are in service in Florida (coaches and power cars) with good results. The company is making cars for operation in Oregon. The company has been making DMU cars for a number of years with success, particularly in Alaska, but the company is small and cannot provide for the buy-back option due to the cost.

Paul Craven asked if the 'guarantee' language is standard in the industry. Charles Hunter explained if the laws change, then the company cannot guarantee compliance to the regulations. Sam Lewis stated there has been discussion of the definition of "sufficient guarantee". The definition is fairly comprehensive and leaves very little "wiggle room".

Rep. Sonny Audette asked why the issues were not settled before accepting the project, and questioned if Colorado Railcar intended to 'live up to their promises'. Sam Lewis assured the company intended to keep its word, but VTrans was concerned about losing

the guarantee should the company go out of business. Charlie Miller added the issue came up during discussion of the contract and the Attorney General applying his interpretation of the legislative language to the contract itself. Sam Lewis said he is uncomfortable committing the state to a purchase without recourse.

Donald Valentine, citizen, asked what alternative to Colorado Railcar was considered for passenger rail service in the state as it appears the company has had financial problems in the past. Regarding cars in service, there are two double deck units (one in Florida operating between Miami and West Palm) and a single deck unit (demo unit). The car technology has been around for a while. It is the power transmission that is in question. The power transmission is essentially the same as the Budd RDCs (failed technology). Mr. Valentine asked why the demonstration car was not used on the route in Vermont (on hills and in weather conditions repeatedly) so the state and climate are not a guinea pig for the project. Sam Lewis noted the demonstration car was coming to Vermont, but there was a fueling accident and fire destroyed the car.

Carl Fowler, Rail Travel Center, stated DMU cars have been tested and are in revenue service in Alaska and Florida. The double deck car cannot operate in Vermont due to clearance issues on the line. The single level car destroyed in the fire was due to a federal employee's ineptitude. It is acknowledged Colorado Railcar could fail, but rail cars are one item that is well built in the United States. The Budd and Pullman car designs still operate even though the companies are gone. The condition of an absolute guarantee threatens the entire DMU project. With the DMU, the state has the opportunity to increase frequency of service, increase patronage, and realize a return on investment. The issue is whether the state wants to do the project or not, and if yes, then the state must be prepared to take a certain amount of risk. The equipment has been proven to work. It is known technology. The likelihood Amtrak will take the equipment is high because Amtrak supports the project. Also, statements about Amtrak not operating in the state in future years are not likely because the Federal Government is not going to shut down any Amtrak component of the northeast corridor. Mr. Fowler spoke in support of the DMU project to revolutionize rail passenger service, giving evidence of why the state should proceed and examples of routes where the service could run. Sam Lewis noted with regard to Amtrak it is most likely the service will continue, but because their federal appropriation was not sufficient Amtrak cut the DMU project from their budget.

Elizabeth Curtiss observed in the calculation of the cost to the state the cost of the cars should be recognized, but the state will also be forced to curtail or eliminate service with aging rail equipment and there is a cost associated with this. The risk and where it is positioned needs to be examined.

Rick Moulton expressed shock the Attorney General is shifting the level of discussion on the project. It was thought the risk was accepted by those who approved the allocation, but now the Attorney General is making the matter a sticking point, essentially ignoring the wishes of the legislature. Rep. Audette clarified the full legislature did not vote on the project and the committee was not 100% in support. There were questions which now are coming to fruition. There should have been a signed agreement at the inception. The

legislature was led to believe this was a fact and now it is discovered not to be. There was further discussion of the guarantee issue. Rick Moulton observed it appears the word “sufficient” had ambiguity and the Attorney General wants an absolute bonded guarantee. One option might be for the state to guarantee the bond. Sonny Audette mentioned the legislature’s fiduciary responsibility, adding he wanted a signed agreement on the guaranteed buy-back which was not provided so he voted against appropriation for the project.

Chris Parker, Trainriders Northeast, asked if the RIF loan can be assumed by a car leasing company. Sam Lewis stated as currently approved this is not possible. Charlie Miller explained the loan can be assigned with permission of the FRA, but the FRA said the state’s full faith and credit must be behind the loan and the other entity would have to pay per their credit arrangement. Essentially there would be a new deal. Dave Wulfson suggested Amtrak buy the RIF loan and provide an operating agreement for the three-year pilot project. Sam Lewis confirmed the option for Amtrak to assume the loan was included in the contract.

Elizabeth Curtiss asked about the amount of the shortfall (about \$3 million on the full \$15.7 million for the project) and suggested investigating nontraditional financial avenues (venture capital; philanthropists giving to green projects) since the DMU cars are new technology to meet more complicated goals. There was further discussion of potential next steps and seeking funding sources (expanding the fiscal players in this new environment). Charlie Miller mentioned the potential for the \$2 million grant from Amtrak being lost if the DMU project does not proceed. Dave Wulfson asked if Amtrak will consider changing their position (of not taking the equipment). Sam Lewis stated there are other states willing to use the equipment so it is possible Amtrak will amend their position.

Carl Fowler outlined options, including getting an earmark to buy the equipment, tying the project to a regional need (Greenfield, North Hampton, Holyoke, and other regional applications), or getting a Congressional earmark for the guarantee. Mr. Fowler noted Colorado Railcar did not expect the request from Vermont to provide a guarantee of financial assurance, and had this been known at the start of the negotiations, the price quote most likely would have been higher. Jeff Munger advised against designing a business plan around a federal earmark, noting last year there were no earmarks because the Federal Government was operating on a continuing resolution which will likely be the case this year. Even if an earmark were secured, the money would not be available before 2009.

Mike Coates proposed tabling discussion on the matter until the legislative session resumes in January. The Rail Council is advisory and the legislature will make a formal decision. Sam Lewis noted the Joint Transportation Oversight Committee (JTOC) will be briefed on the matter. Rick Moulton urged VTrans to offer alternatives to the buy back scenario to the legislature (how to leverage \$15 million building cars that Amtrak can guarantee to run in Vermont). The Rail Council should discuss the issue and provide advice.

MOTION by Mike Coates, SECOND by George Barrett, to table discussion on the DMU cars.

DISCUSSION: George Barrett reiterated a performance bond on the company should be in place at the start. There was discussion of the Rail Council giving advice to the legislature (session resumes in January, 2008). Dave Wulfson suggested the Passenger Rail Subcommittee study the matter and develop alternatives for review by the Rail Council before the next meeting.

FRIENDLY AMENDMENT by Dave Wulfson, SECOND by Elizabeth Curtiss, to table discussion and refer the matter to the Passenger Rail Subcommittee for discussion at their next meeting.

DISCUSSION ON AMENDMENT: Mike Coates pointed out much money will be spent to improve rail infrastructure. Dave Wulfson stated the current day Amtrak service is more costly than the DMU project. The buy-back guarantee is the show stopper so the state should buy the bond and cover the guarantee. The need to have recommendations for review by the Rail Council prior to the legislative session in January was stressed.

AMENDMENT TO THE FRIENDLY AMENDMENT by Elizabeth Curtiss, SECOND by John Cook, to direct the Passenger Rail Subcommittee to discuss the matter and provide options for review by the Rail Council by January 8, 2008.

DISCUSSION ON AMENDING THE FRIENDLY AMENDMENT: There was further discussion of having all necessary information in order to formulate recommendations.

VOTING ON AMENDMENT: unanimous; motion carried

VOTING ON MOTION AS AMENDED: unanimous; motion carried.

Dick Hosking suggested the Rail Council meet in January instead of February.

Rep. Aswad pointed out the cost to the state to run passenger rail service needs to be considered if the DMU project is abandoned. Donald Valentine suggested researching the cost to lease and operate similar equipment.

4. Knowledge Corridor and Vermonter

Charlie Miller explained the knowledge corridor project is reviewing passenger rail service for New Haven to Springfield to Holyoke, North Hampton, and Greenfield to White River Junction. There is no service now from Springfield, Massachusetts to Greenfield, Massachusetts. The State of Connecticut is looking at commuter rail service between New Haven and Springfield. A system is under design. Pioneer Valley Transit Authority received an earmark to study the area from Springfield (Massachusetts) to White River Junction. The project is a tri-state effort. Pan-Am Railroad asked the Massachusetts Congressional delegation for funding of improvements on the line for that area for Amtrak intercity passenger service. This was in consideration of the DMU service being in operation. There will be a stakeholders meeting in northern Massachusetts in early January, 2008. Dave Wulfson suggested Massachusetts be asked

to help with a buy-back bond for the DMU service. Sam Lewis and Charlie Miller will inform Massachusetts of the situation with the DMU project in Vermont. Charlie Miller will forward a map of the knowledge corridor route to the Rail Council.

5. Amtrak Ridership and Revenue Update

The Rail Council received a graph comparing ridership numbers on the Vermonter and the Ethan Allen Express in 2006 and 2007. October 2007 shows an increase in ridership on the Vermonter of 9.2% and a decrease in ridership on the Ethan Allen Express of 5.8%. There was a high spike in ridership on the Ethan Allen Express in October 2006 so the decrease is an expected adjustment. Revenues for 2007 (ticket sales only) show an 8.2% increase on the Ethan Allen Express and a 13.9% increase on the Vermonter. The state receives 100% of the Vermonter revenue, but only 85% of the revenues generated by the Ethan Allen Express. The revenue trend for both services is expected to continue. The contract with Amtrak (cost of \$3,940,033) includes a substantial increase in fuel cost.

6. Passenger Rail Service Subcommittee

Charlie Miller reviewed minutes of the last subcommittee meeting. Discussion included increasing the membership to seven members (the subcommittee settled on five members), Amtrak ridership report, the DMU project, on-time performance by Amtrak (Vermont and Ethan Allen Express), capital funding for two private railroads, getting the CLP up to track speed (staff will work with the railroad to compile information), and the NECR shortfall (available funds and where to spend the money to make the Amtrak schedule viable). The subcommittee meets the first Tuesday of the month at One Main Street Landing in Burlington. The subcommittee will not meet on January 8, 2008. Copies of the minutes will be provided to the Rail Council.

Mike Coates presented the goal of the subcommittee to have Amtrak running from Rutland to Burlington by 2010. Elizabeth Curtiss interjected the subcommittee had a reaffirmation of Essex Junction as the terminus. The charge of the subcommittee was clarified. A copy of the charge will be sent to members. Paul Craven noted a consistent issue has been to reinstate Amtrak service from Rutland to Burlington. A map of the route from Manhattan (NYC) to Burlington and a memo from Paul Craven, dated 12/5/07, was given to the Rail Council. The line from Rutland to Burlington has sections needing work, but improvements from Vergennes to Burlington have already been done, stated Mr. Craven.

Jeff Munger mentioned rail earmarks not spent are lost through the “sweep” process in Washington, D.C. Vermont lost \$20 million in earmarks secured by Sen. Leahy and Sen. Jeffords. There are rumors that another sweep will take place. There was further discussion of funding. Elizabeth Curtiss asked if money is assigned to the project (connection from Rutland to Burlington) and available to the state. Dick Hosking explained the legislature approves spending, but 2010 is not a realistic date because of restrictions on funds (meeting the state match). VTrans is developing a business plan to address western corridor needs. The entire \$30 million earmark is not available for the section from Rutland to Burlington. There are other projects and entities wanting the funds. Paul Craven pointed out the VTrans budgets in 2006, 2007, and 2008 show work

on the section of track under discussion. Rick Moulton mentioned other matching monies are available (GRIP, user fees, and such). Sam Lewis stated FHWA has full oversight on rail projects and require a financial plan for the western corridor. The financial plan will specify what is done, how much it will cost, and where the funding will come from.

There is a process that must be followed. The financial plan will also determine if match money from user fees can be used in the corridor. FHWA has not made a determination on this as yet. Mr. Lewis suggested a presentation be given showing how a project evolves through the process. Paul Craven suggested representatives from FHWA attend Rail Council meetings and be engaged in the discussions. Sam Lewis clarified FHWA has oversight on rail projects, but does not run the programs. Jeff Munger mentioned SAFETEA-LU funding allows the use of user fees, but FHWA interprets the language differently. Sam Lewis will research the matter.

Mr. Lewis mentioned the vision of the Rail Council to preserve existing rail service, connect Rutland to Burlington, and work on upgrading the Green Mountain corridor to 286,000 pound rail. Elizabeth Curtiss suggested the Council needs to discuss how far out the vision goes: restoring the western corridor, preserving and upgrading the Vermonter corridor, the vision for various spurs and links (knowledge corridor, Bennington spur, Middlebury spur), where rail works best, where trucks work best. Mike Coates stressed the need to have a point of focus (target) so the project gets done. Discussion of passenger rail service from Rutland to Burlington continued. Rick Moulton stated a functioning through corridor ties into the Rail Council's business plan. Elizabeth Curtiss noted many Burlington residents feel the connection would be a 'restoration' of service. Sam Lewis advised the project needs to be consistent with the business plan and prioritization of mission goals. Rick Moulton stressed the next priority after Whitehall is service from Rutland to Essex, and this is on the books already. Dave Wulfson suggested if necessary the Rail Council revisit priorities and make a recommendation to VTrans. Mr. Wulfson also suggested involving the railroads in match money for projects in areas where the companies are doing rail work so the federal earmarked funds can be used and not lost.

7. Rail Infrastructure Subcommittee

Mike Coates reported the Infrastructure Subcommittee discussed the following:

- EIS for the Middlebury rail spur (done and recommendations are anticipated). The subcommittee proposed moving the project to a private entity with oversight by VTrans. Charlie Miller noted according to the latest schedule a Record of Decision will be issued next fall or sooner.
- Issue of 286,000 pound rail on the Green Mountain line and the Rutland/Hoosick branch. The cost to upgrade to 286,000 pound rail from Bellows Falls to Palmer is \$940,000.
- Redirecting \$500,000 from the Rutland rail yard project toward (re)establishing Amtrak service from Rutland to Burlington.
- Immediate repair of the Burlington Tunnel because the economic impact on Chittenden County is great. The cost of short term repair is \$400,000 and long term repair is \$1 million for the status quo (current clearances).
- Review of the priority list of projects and possible need for revisions.

Mike Coates stated there are many projects to be done in the rail system and limited funds. The economic impact of upgrading the rail system must be considered (jobs, fuel cars only 80% full due to track limitations, possibly hauling municipal solid waste by rail rather than truck). A plan must be developed to justify necessary funding for projects that provide a return on investment. The environmental aspect of rail needs to be emphasized and environmental groups should promote this point. Sam Lewis agreed, adding the first step is the vision then the funding and then the benefit, all melded into the overall transportation system - that is the balance and debate at the legislature.

Elizabeth Curtiss mentioned the idea of the Rail Council forming a financial subcommittee to track funds and bring more financial people to the table to assemble a clear statement, not an incidental statement. There was further discussion of having a mission and identifying funding. Sam Lewis stated there have been changes in direction in the past year (traffic patterns, visions, funding). Ms. Curtiss suggested the Council receive a monthly update from industries that use public funds.

8. Other Business

Rutland Rail Yard

Tom Macauley stated the Mayor of Rutland selected an alternative for the rail yard relocation that is in the flood plain so the alternative will not be pursued. Regarding the EIS alternatives, the only viable location to increase capacity and efficiency of the yard is south of the existing yard. The location is out of the flood plan and has minimum impact on wetlands. A 5th alternative was offered which will reduce cost by one-third and have fewer impacts. The EIS internal draft will be available by February. EIS publication will be late spring/early summer. Issues with the Rutland project are close to being resolved, continued Mr. Macauley, and now is not the time to change allocation of funds. Rep. Sonny Audette stressed the need to have the Mayor's support of the EIS before the legislature makes a decision.

Executive Summary of the Northeast Rail Operation Study

The Council received copies of the executive summary. Copies of the full study are available upon request.

Regional Passenger Rail Forum

Announcement was made of the regional passenger rail forum in Bellows Falls on 12/6/07.

8. Next Meeting/Agenda

Next Rail Council Meeting: Tentative date in January, 2008.

9. Adjournment

MOTION by George Barrett, SECOND by Mike Coates, to adjourn the meeting.
VOTING: unanimous; motion carried.

The meeting was adjourned at 4:17 p.m.

RScty: M.E.Riordan

“To Do” List from 12/5/07 Rail Council Meeting:

1. Sam Lewis and Charlie Miller will inform Massachusetts of the situation with the DMU project in Vermont.
2. Charlie Miller will forward a map of the knowledge corridor route to the Rail Council.
3. Charlie Miller will forward copies of the Passenger Rail Subcommittee meeting minutes to the Rail Council.
4. The charge of the Passenger Rail Subcommittee was clarified. A copy of the charge will be sent to members.
5. Jeff Munger mentioned SAFETEA-LU funding allows the use of user fees, but FHWA interprets the language differently. Sam Lewis will research the matter.